

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Grace Stephen	Team: Squad #08	CCRB Case #: 202305031	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 05/23/2023 4:47 PM	Location of Incident: Simpson Street subway station (Manhattan-bound 2/5 line) (between Simpson St and Westchester Ave)	18 Mo. SOL 11/23/2024	Precinct: 41		
Date/Time CV Reported Mon, 06/05/2023 3:32 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/05/2023 3:32 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Ramon Cepeda	02978	954623	TD 12
2. PO Zachary Dolce	16191	967485	TD 12
3. PO Ralph Samedy	24412	967320	TD 12

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Rafael Reynoso	08074	961162	TD 12

Officer(s)	Allegation	Investigator Recommendation
A . SGT Ramon Cepeda	Force: Sergeant Ramon Cepeda hit § 87(2)(b) against an object.	
B . SGT Ramon Cepeda	Force: Sergeant Ramon Cepeda used physical force against § 87(2)(b)	
C . PO Zachary Dolce	Force: Police Officer Zachary Dolce used physical force against § 87(2)(b)	
D . PO Ralph Samedy	Force: Police Officer Ralph Samedy used physical force against § 87(2)(b)	
E . SGT Ramon Cepeda	Force: Sergeant Ramon Cepeda used a non-lethal restraining device on § 87(2)(b)	
F . SGT Ramon Cepeda	Force: Sergeant Ramon Cepeda used a non-lethal restraining device on § 87(2)(b)	

### Case Summary

On June 5, 2023, § 87(2)(b) filed this complaint via telephone with the CCRB on behalf of his daughter, 17-year-old § 87(2)(b).

On May 23, 2023, at approximately 4:47 pm at the Simpson Street subway station (Manhattan-bound 2/5 line) in the Bronx, § 87(2)(b) evaded transit fare. Sergeant Ramon Cepeda slammed her against a gated door (**Allegation A: Force**, § 87(2)(g) Sgt. Cepeda, and Police Officers Zachary Dolce, and Ralph Samedy (all from Transit Bureau District 12) then threw and tackled § 87(2)(b) (**Allegations B through D: Force**, § 87(2)(g) After a physical struggle on the ground, Sgt. Cepeda used a taser on § 87(2)(b) twice (**Allegation E: Force**, § 87(2)(g) **Allegation F: Force**, § 87(2)(g).

§ 87(2)(b) was arrested for the following: theft of services (intent to obtain transit without payment); resisting arrest; 2<sup>nd</sup> degree obstructing governmental administration; trespassing; and disorderly conduct (fighting/violent behavior) (**Board Review 01**).

Six body-worn camera (BWC) videos were received for this incident (**Board Review 02**).

### Findings and Recommendations

**Allegation (A) Force: Sergeant Ramon Cepeda hit § 87(2)(b) against an object.**

**Allegation (B) Force: Sergeant Ramon Cepeda used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Zachary Dolce used physical force against § 87(2)(b)**

**Allegation (D) Force: Police Officer Ralph Samedy used physical force against § 87(2)(b)**

**Allegation (E) Force: Sergeant Ramon Cepeda used a non-lethal restraining device on § 87(2)(b)**

**Allegation (F) Force: Sergeant Ramon Cepeda used a non-lethal restraining device on § 87(2)(b)**

The facts are undisputed that PO Dolce observed § 87(2)(b) evade transit fare by jumping over the turnstiles. Sgt. Cepeda instructed her to leave the station multiple times. After she refused to leave, Sgt. Cepeda tased § 87(2)(b). She was subsequently treated at § 87(2)(b) in the Bronx.

§ 87(2)(b) (5'3, 125 lbs.) stated (**Board Review 03**) that after she evaded the transit fare, PO Dolce approached her and her friend § 87(2)(b) and asked § 87(2)(b) to step aside so he could give her a summons for evading the fare. PO Dolce requested her identification, but she informed him that since she did not have her ID with her, she would verbally provide it. PO Dolce walked away, and after a few minutes, she assumed PO Dolce would forgo issuing her a summons, so she walked towards the exit gate. PO Dolce reapproached her, followed by Sgt. Cepeda, and instructed her to leave. She yelled at them, telling them she was not leaving. Sgt. Cepeda informed her that she was trespassing and warned her that he would tell her to leave three times, at which point, if she did not leave, the officers “would take action.” § 87(2)(b) responded that she would not leave. After giving § 87(2)(b) a third warning, Sgt. Cepeda grabbed her by her hoodie and turned her around, then grabbed her head, and “slammed [her] face into the exit gate.” Sgt. Cepeda used one hand to grab her hands, while still holding her head with the other. § 87(2)(b) held onto the gate with both hands. § 87(2)(b) attempted to walk through the gate, but PO Dolce approached her, and the officers tackled her to the ground, where she fell on her face. At some point, she came to be on her back and resisted being handcuffed by holding her hands locked together in front of her chest, while facing the officers. Sgt. Cepeda warned § 87(2)(b) that he would tase her, at which point she got scared and told Sgt. Cepeda that she would put her hands behind her back. An officer lifted her to her knees, she separated her hands, and an officer rear

cuffed her right arm. She attempted to move her left hand behind her, but the officers were “grabbing [her] in different directions.” Before she could move her left hand behind her back, Sgt. Cepeda tased her on the left side of her stomach. After Sgt. Cepeda ceased tasing her, § 87(2)(b) placed her left hand behind her back, which was handcuffed. During the incident, § 87(2)(b) sustained the following injuries: a swollen and bruised left forearm; bruised knees and shoulders; slits on the left side of her stomach from the taser prongs (which had to be surgically removed); and a bruised and scabbed left side of her face.

The investigation sent (**Board Review 10**) § 87(2)(b) a HIPAA form, to obtain her medical records. To date, she has yet to return the completed form (**Board Review 11**). Although § 87(2)(b) attested (**Board Review 03, 19**) to having phone footage and photos of the incident, she failed to provide them to the investigation.

An NYPD search for an arrest photo on the incident date for § 87(2)(b) yielded negative results (**Board Review 18**).

Per their service photos, Sgt. Cepeda is 5’6” and 150 lbs., PO Dolce is 5’8” and 165 lbs., and PO Samedy is 5’9” and 181 lbs. (**Board Reviews 23 - 25**).

At 01:04 of Sgt. Cepeda’s BWC footage (**Board Review 04**), Sgt. Cepeda tells § 87(2)(b) “You have to leave,” to which § 87(2)(b) replies, “I’m not leaving!” From 01:06 to 01:35, he warns § 87(2)(b) that she will be arrested for criminal trespassing. She tells him that she will not be arrested. Sgt. Cepeda asks her two more times to leave and is interrupted by § 87(2)(b) who says, “Tell me one more time.” Sgt. Cepeda again says to § 87(2)(b) and § 87(2)(b) “You ladies have to leave.” They do not leave. At 01:22, PO Dolce tells Sgt. Cepeda that § 87(2)(b) is the one who jumped the turnstiles. Sgt. Cepeda tells them to leave for a fourth time, then at 01:37, Sgt. Cepeda reaches for § 87(2)(b) with both hands and § 87(2)(b) turns away and pulls her left arm away from Sgt. Cepeda and says, “Don’t touch me.” With handcuffs in his right hand, Sgt. Cepeda grabs the back of § 87(2)(b) sweatshirt. He holds her chest first against the gate. At 01:47, he informs her that she is going to get tased. He attempts to place the handcuffs on her right wrist, but § 87(2)(b) holds onto the gate. At 01:57, Sgt. Cepeda has his taser drawn, as § 87(2)(b) right hand holds onto the gate, and says, “Ma’am, you’re going to get tased.” At 02:07, § 87(2)(b) is on her right side on the ground (though the video does not capture how she got there) and PO Dolce and PO Samedy are squatting next to her. § 87(2)(b) holds her hands interlocked together in front of her while she is on the ground. From 02:08 to 02:20, the officers pull her wrists, to pry her hands apart, before § 87(2)(b) moves her left arm between her legs (02:14). Sgt. Cepeda warns her multiple times that he will tase her. While standing § 87(2)(b) upward (02:33), at least six people stopped and observed the interaction. A couple of them are recording but are not otherwise getting involved. § 87(2)(b) stands right next to and yells at the officers. Sgt. Cepeda continues to point (02:36) this taser (red laser engaged) at § 87(2)(b). At 02:47, a taser is heard. See PO Samedy’s BWC footage summary below. At 05:22, § 87(2)(b) face is fully visible and there does not appear to be any redness, swelling, bleeding or other injury.

At 01:40 of PO Samedy’s BWC footage (**Board Review 06**), PO Samedy approaches § 87(2)(b) as she is standing and hanging onto the exit gate with her arms and PO Dolce attempts to pull her left hand from the gate. PO Dolce and PO Samedy grab § 87(2)(b) left wrist and attempt to move her wrist behind her, while Sgt. Cepeda is on her right. At 01:55, the officers all remain standing in place as § 87(2)(b) falls backward to a seated position and then rolls onto her right side while tucking her arms into her chest. The officers do not let go of her as this occurs. At no point is § 87(2)(b) face or chest down on the ground. At 02:23, officers handcuff § 87(2)(b).

left wrist and stand her up, chest first, against the transit booth. § 87(2)(b) says (02:27), “Yo, I’ll be home soon. Watch this, watch this,” as she holds her right arm bent and in front of her chest. She then says, “You pussy ass nigga. Suck my dick. You heard? I want to hear you scream, bro.” At 02:42, a taser is heard, though Sgt. Cepeda’s body is too close to § 87(2)(b) to see her body position until 02:46, where § 87(2)(b) (her chest and face are pressed against the transit booth) slumps downward, towards the ground with her eyes closed, as an officer tells her to stand up. The camera angle is too high to see the exact location of her right arm, though she appears to have an open shoulder angle. At 02:50, a second taser is heard, while simultaneously one of the officers says, “Just give me your hand.” It appears that PO Samedy is holding § 87(2)(b) right arm by the elbow straight out to the side and there is no change in the positioning of her shoulder. At 02:54, both of § 87(2)(b) hands are behind her, as officers hold onto her right wrist. She continues to fall further onto the ground as the officers handcuff her. At 02:58, she tells the officers that they have her, and the second handcuff is successfully placed.

Sgt. Cepeda attested (**Board Review 17**) that PO Dolce observed § 87(2)(b) and § 87(2)(b) enter through the emergency gate inside of the station together. PO Dolce instructed both that they either had to pay or leave the subway station. Sgt. Cepeda expounded that PO Dolce used discretion when he first interacted with the two because they were possibly minors who were coming from school. PO Dolce informed the two that he was going to generate a summons. At that point, Sgt. Cepeda did not want to generate any summonses to the two because his primary assignment was dealing with illegal fare swipes. Sgt. Cepeda noted that at no point during the incident did he obtain the names or dates of birth for either of the two. Sgt. Cepeda and PO Dolce repeatedly told the two to leave the subway station because they had not paid the fare, which they refused to do. Approximately 30 seconds to two minutes later, Sgt. Cepeda removed his handcuffs and attempted to place them on § 87(2)(b) who immediately grabbed ahold of the emergency gate’s metal frame. § 87(2)(b) pressed her face against the metal frame of the emergency gate of her own volition as she held onto it. Sgt. Cepeda explained that to ensure the safety of himself, his officers, and § 87(2)(b) he held onto her sweater so that she would not hit her face on anything or cut herself on the metal edges around the gate’s frame. Sgt. Cepeda added that the policy for ejecting an individual from the subway station or train is to “grab their shoulder and hands, and just guide them.” As she held onto the gate, her sweater slipped out of Sgt. Cepeda’s grasp. Sgt. Cepeda told § 87(2)(b) approximately three more times to stop resisting. § 87(2)(b) then fell to the ground of her own volition, near the subway station booth; none of the officers tackled her. As the officers attempted to handcuff § 87(2)(b) she again told them that she was not going anywhere. Sgt. Cepeda told § 87(2)(b) several times that she would be tased if she continued to actively resist. Sgt. Cepeda said that in his experience, typically when an individual is told that they will be tased, “something clicks in their head, and they stop.” § 87(2)(b) on the other hand, continued to resist while PO Dolce, PO Samedy, and Sgt. Cepeda (who had one hand on her and the other on his taser) tried to gain control of her. § 87(2)(b) then said, “See what is going to happen to these cocksuckers,” and attempted to get up and made “threatening behaviors” towards officers by sitting up with her hands tightly clasped in front of her chest and legs facing towards the officers. These actions concerned Sgt. Cepeda because she was in a position to possibly kick and injure one of his officers. Several civilians were around them causing a commotion and recording the incident. § 87(2)(b) who at that point was still not handcuffed, presented a physical threat, and based on the circumstances at the time, Sgt. Cepeda decided to tase her because, per NYPD policy, it was a fast (“5 seconds and done”), least lethal option and the “only best solution” to get the situation under control. Sgt. Cepeda tased § 87(2)(b) on her back as she stood against the station booth with her back facing Sgt. Cepeda. Sgt. Cepeda expounded (**Board Review 22**) that he deployed his taser (shot the darts into § 87(2)(b) skin) and then triggered two electrical cycles. He explained that each cycle automatically lasts five seconds. In this incident, after the first five second electrical cycle, § 87(2)(b) still held her hands in front of her, and lifted her knees and pulled them to the

ground in front of her, pulling all her weight down, like “dead weight”. One of the other officers instructed her to stand up. § 87(2)(b) continued to actively resist and that during § 87(2)(b) resistance, PO Dolce pulled her right hand towards her back. He did not recall the location of her left arm. Two seconds later, Sgt. Cepeda triggered the second cycle. After triggering the second cycle, § 87(2)(b) immediately complied, was handcuffed, and Sgt. Cepeda called an ambulance for her.

The Taser Data Sheet (**Board Review 21**) showed that Sgt. Cepeda triggered his taser twice, eight seconds apart for five seconds each (**Board Review 20**).

Per the Threat Resistance and Injury (TRI) Worksheet and Supervisor’s Report (**Board Review 12**), PO Dolce observed § 87(2)(b) hopping over the turnstiles. After being asked multiple times to leave the subway station, and her subsequent refusal to leave and active resistance towards the officers, force was used involving all three officers, which was described as “wrestling/grappling, Conducted Electrical Weapon (probes only).”

The Medical Treatment of Prisoner Report (**Board Review 13**) documented that a Conducted Electrical Weapon (CEW aka taser) was used on § 87(2)(b) and that she was transported to § 87(2)(b) (a/k/a § 87(2)(b)) to remove the taser prongs. No other physical injury was documented.

BWC footage from different angles showed that although Sgt. Cepeda held § 87(2)(b) against the gate, at no point did he slam her head or face against the gate. Additionally, BWC footage showed no injury to § 87(2)(b) face or head. § 87(2)(g)

Sgt. Cepeda’s and PO Samedy’s BWC showed that the officers were standing still and remained standing without losing grip of § 87(2)(b) arms when she fell to the ground. Additionally, she was never face or chest down on the ground, and BWC footage showed no facial injuries.

§ 87(2)(g)

21 New York Codes, Rules and Regulations (NYCRR) §1050.4(a) (**Board Review 26**) prohibits a person from using or entering “upon the facilities or conveyances of the authority, for any purpose, without the payment of the fare.” Per Section 1050.2(a) and (b), a facility includes any property in reference to the New York City (NYC) Transit Authority, and Section 1050.2(e) lists a subway as conveyance.

NYPD Patrol Guide (PG) Procedure 212-20 (**Board Review 05**) authorizes a uniformed members-of-service (MOS) to eject a person from a NYC transit property who violates any portion of NYCRR §1050. An arrest may be appropriate if the subject’s conduct “is such that it requires more force than is ordinarily needed to assist and guide” them out of the transit property.

PG Procedure 221-01 (**Board Review 14**) permits MOSs to use force when it is reasonable to ensure their safety, to gain compliance, to place a person into custody or to prevent an escape from custody.

Per PG Procedure 221-08 (**Board Review 16**), “a CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.” Active resisting includes physically evasive movements to prevent a member-of-service’s (MOS) attempt at control, i.e., “bracing,

tensing, pushing,” to avoid or prevent being taken into or retained in custody. Active aggression is the “threat or overt act of an [either a physical or verbal assault], coupled with the present ability to carry out the threat or assault,” which reasonably indicates that imminent injury. The totality of the circumstances should be considered when determining the use of a CEW, which include the severity of the crime, actions taken by the subject, the number of subjects in comparison to number of MOS, and the size and age the subject in comparison to MOS. When feasible, the MOS should “issue an appropriate verbal warning, consistent with personal safety” to the subject. MOS are advised to use a CEW “for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary.” It is “strictly prohibited” to use the CEW on an individual who passively resists, i.e. goes limp or offers no active physical resistance.

PG Procedure 221-02 (Board Review 15) defines active resisting as “physically evasive movements” with the “intention to avoid or prevent being taken into or retained in custody.” Once the subject is placed in custody, the member-of-service must ensure that they receive “immediate medical attention and provide first aid, if appropriate.”

§ 87(2)(g)

§ 87(2)(b) BWC footage established that she refused to leave the subway station after Sgt. Cepeda repeatedly ordered her to. BWC footage depicted § 87(2)(b) actively resisting their attempts to handcuff her by holding onto the emergency exit gate, interlocking her hands in front of her, holding her arm between her legs, ignored at least four warnings over the course of a minute that she would be tased if she did not comply, continued to hold one arm in front of her chest even after the other wrist was handcuffed, and made several verbal statements indicating that she would not comply. The officers only placed one of § 87(2)(b) hands into handcuffs prior to Sgt. Cepeda’s taser usage. § 87(2)(g)

The Taser Data Sheet for Sgt. Cepeda’s taser showed that eight seconds after deploying his taser, he tased § 87(2)(b) a second time. § 87(2)(g)

§ 87(2)(b) BWC footage established that after Sgt. Cepeda tased § 87(2)(b) the first time, her body slumped downward and was visibly immobile with her knees on the ground and chest against the transit booth and, as previously noted, her left wrist was already handcuffed. Per BWC footage and Sgt. Cepeda’s description of § 87(2)(b) after the first taser deployment, her physical actions were largely akin to her going “limp,” § 87(2)(g)

§ 87(2)(b) Taser use is allowed only if the subject is actively resisting or is actively aggressive when being placed into custody. § 87(2)(g)

§ 87(2)(b) BWC footage showed her left wrist was handcuffed and her right shoulder angle appeared open after the first use of the taser, and at minimum, her right elbow was fully open to the side at the point the second shock was triggered. Additionally, her otherwise limp body was fully contained between three larger officers and an immobile transit booth prior to the second use of the taser. § 87(2)(g)

§ 87(2)(g)

### **Civilian and Officer CCRB Histories**

- § 87(2)(b)  
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- Sgt. Cepeda has been a member-of-service for 11 years and has been a subject in three other CCRB complaints and four other allegations, none of which were Substantiated. § 87(2)(g)
- PO Dolce has been a member-of-service for five years and has been a subject in one other CCRB complaint and three other allegations, none of which were Substantiated. § 87(2)(g)
- PO Samedy has been a member-of-service for five years, and this is the first CCRB complaint to which he has been a subject.

### **Mediation, Civil, and Criminal Histories**

- This complaint was not suitable for mediation.
- As of August 18, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this incident (**Board Review 08**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **RPBP History**

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

Squad: 8

Investigator:	<u>Grace Stephen</u>	<u>Investigator Grace Stephen</u>	<u>07/31/2024</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Ethan De Angelo</u>	<u>IM Ethan De Angelo</u>	<u>07/31/2024</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date